

**ORIGINAL**

Decision No. 68031

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, )  
rates, and practices of )  
W. H. MORSE TRUCKING, LTD. )

Case No. 7551  
Petition to Modify  
Decisions Nos. 66413 and 67340  
(Filed June 25, 1964)

Donald Murchison, for respondent.  
Lawrence Q. Garcia, for the Commission  
staff.

O P I N I O N

By Decision No. 66413, dated December 3, 1963, in the above-entitled case, the respondent was ordered, among other things, to take such action as may be necessary to collect specified undercharges together with those found after the examination of the respondent's records, and to notify the Commission in writing of the consummation of such collections.

In addition, the Commission ordered that in the event undercharges ordered to be collected, or any part of such undercharges, remained uncollected one hundred twenty days after December 24, 1963, respondent should institute legal proceedings to effect collection and file with the Commission, on the first Monday of each month thereafter, a report of the undercharges remaining to be collected and specifying the action taken to collect such undercharges and the result of such action until such undercharges had been collected in full, or until further order of the Commission.

On December 13, 1963, the respondent filed a Petition for Rehearing. On June 3, 1964, the Commission issued an order (Decision No. 67340) wherein it stated that having reconsidered Decision No. 66413 and having found that Item 296 of Section 3-A of Minimum Rate Tariff No. 7 serves no purpose on the determination of rates or charges under the tariff and should be canceled in the interests of clarity and tariff simplification, it ordered that ordering paragraph 2 of Decision No. 66413 specifying a fine of \$1,000.00 be stricken and in other respects denied a rehearing.

Thereafter, on June 25, 1964, the respondent filed its Petition to Modify Decisions Nos. 66413 and 67340 by deleting the paragraphs requiring respondent to ascertain undercharges and take steps to collect them. The respondent also alleges that it intends to abandon its trucking business, surrender its operating permit, and sell its equipment to Rodeffer Industries, Inc., provided respondent and Rodeffer Industries, Inc., are able to compromise the claim for violations ordered to be collected by this Commission; that an appraisal has been made by an independent appraiser which has determined that respondent's equipment has a value of \$144,500; that Rodeffer Industries, Inc., will pay to respondent the sum of \$160,000 in full settlement of all claims arising out of the undercharge violations found by this Commission in Decision No. 66413, supra, on the condition that the Commission approves the settlement by way of modification of said decision.

A public hearing on the petition to modify the decisions was held before Examiner Rogers in Los Angeles on July 17, 1964, and the matter was submitted.

The respondent (petitioner herein) contends that it has not violated any portion of Minimum Rate Tariff No. 7, and stated that it intends to petition the California Supreme Court for a writ of certiorari; that it has ceased to do business; and that it desires that the proposed agreement be authorized. It was contended by respondent's counsel that the statute of limitations has run against a good many of the undercharges required to be collected by Decision No. 66413 and cannot be collected; that if the proposed compromise is not authorized respondent intends to file the aforesaid petition for a writ of certiorari; and that such petition and the stay of proceedings resulting therefrom will extend the effective date of any order for approximately one year, and that during said period the amount recoverable on the undercharges will materially diminish.

The record on the hearing on the herein petition shows that 98 per cent of respondent's business, which was the subject of the investigation, consisted of transportation for Rodeffer Industries, Inc.; that the moneys respondent was ordered to collect by Decision No. 66413, supra, are principally moneys due from Rodeffer Industries, Inc.; that Rodeffer has agreed to purchase respondent's equipment and to pay a sum as a compromise of the undercharges ordered to be collected by the Commission; that the proposed agreement will require Rodeffer to pay to respondent the sum of \$160,000 in full settlement of costs of purchased equipment and claimed undercharges; that as of February 15, 1964, the appraised value of respondent's equipment (Exhibit 12) was

\$144,500; that the claimed undercharges amount to between \$175,000 and \$185,000; and that respondent is terminating its business.

Respondent urges that the compromise be accepted. The staff counsel pointed out that the \$160,000 settlement includes approximately \$55,000 of indebtedness on the equipment which, under the proposed compromise, must be paid by respondent, leaving a net of approximately \$105,000 to respondent. The staff counsel urges that the petition for modification be denied.

Upon the record herein the Commission finds that:

1. The violation by respondent of Minimum Rate Tariff No. 7, as specified in Decision No. 66413, was inadvertent due to the erroneous interpretation of said tariff by respondent.
2. Respondent intends to terminate business as a rock products carrier, and to execute an agreement with Rodeffer Industries, Inc., the company which hired respondent for the transportation at rates lower than specified in Minimum Rate Tariff No. 7; that respondent has undercharged Rodeffer between \$175,000 and \$185,000 for the transportation of rock products; that said undercharges were inadvertent and due to respondent's erroneous interpretation of Minimum Rate Tariff No. 7.
3. Respondent and Rodeffer desire authority to execute the agreement, referred to supra, pursuant to which Rodeffer will purchase from respondent its transportation equipment which was appraised on February 15, 1964, for the sum of \$144,500; that respondent will pay off any balances due on the purchase prices of said equipment, which balances totaled approximately \$55,000 on February 15, 1964, and Rodeffer will pay respondent \$160,000; that

said payments and acts are contingent on this Commission approving a modification of Decision No. 66413, supra, so that ordering paragraphs 2 through 6 thereof will be stricken therefrom.

4. Respondent has terminated business and is not transporting rock products; that in the event the compromise is not effected and the requested authorization granted, Rodeffer will not purchase the respondent's equipment; that, in addition, if this compromise is not authorized respondent will exhaust all legal remedies seeking a reversal of the order of Decision No. 66413, as modified.

The Commission concludes that the granting of the petition for modification would be adverse to the public interest and that the petition should not be granted.

O R D E R

IT IS ORDERED that the Petition to Modify Decisions Nos. 66413 and 67340, filed with this Commission on June 25, 1964, is denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 13th day of OCTOBER, 1964.

[Signature] President  
[Signature]  
[Signature]

Commissioners

Commissioner Frederick B. Haloboff  
present but not voting.

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.